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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 SCOTT C. SMITH,

9 Plaintiff,

10 v.

11 B. ZAVODNY,

12 Defendant.

CASE NO. C10-5188BHS

ORDER GRANTING IN PART
AND RESERVING RULING IN
PART MOTION FOR WRIT OF
HABEAS CORPUS AD
TESTIFICANDUM FOR
SCOTT C. SMITH

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14 This matter comes before the Court on Plaintiff Scott C. Smith's motion for writ
15 of habeas corpus ad testificandum for Smith (Dkt. 114). The Court has considered the
16 pleadings filed in support of and in opposition to the motion and the remainder of the file
17 and hereby grants in part and reserves ruling in part the motion with regard to Smith¹ for
18 the reasons stated herein.
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21 ¹ The Court notes that Smith's motion (Dkt. 114) also includes a motion for writ of
22 habeas corpus ad testificandum for witnesses he intends to call to testify at trial who are currently
incarcerated. The Court will issue a separate order ruling on the motion regarding the testimony
of the prisoner witnesses.

1 On April 16, 2012, Smith filed a motion for writ of habeas corpus ad testificandum
2 seeking an order from the Court requiring Department of Corrections to make Smith
3 available for his trial in the undersigned's courtroom at the United States Courthouse in
4 Tacoma, Washington. Dkt. 114. On May 1, 2012, the Court held a pretrial conference in
5 which Smith's motion for writ was discussed. On May 14, 2012, the Court issued an
6 order to Zavodny to show cause why the Court should not grant Smith's motion for writ.
7 Dkt. 129. On May 18, 2012, Zavodny filed a response to the order stating that he had no
8 objection to the transport of Smith from the state penitentiary in which he is incarcerated
9 to Pierce County Jail. Dkt. 130. However, Zavodny stated that if the United States
10 Marshal was unwilling to provide transport to and from the jail and courtroom security
11 for the trial, then Smith should be ordered to reimburse the State for the costs associated
12 with transporting and providing custody for Smith during the trial. *Id.*

13 The Court concludes, and Zavodny has stipulated, that Smith's motion for writ
14 should be granted to the extent that Smith should be made available for the trial. The
15 Court will reserve ruling on whether Smith will be required to reimburse the State for the
16 costs of transporting him to and from the Pierce County Jail and courtroom security
17 during the trial.

18 Therefore, it is hereby **ORDERED** that Smith's motion for writ of habeas corpus
19 ad testificandum (Dkt. 114) is **GRANTED in part** as follows: The Washington
20 Department of Corrections shall arrange for the production of Plaintiff, Scott C. Smith,
21 DOC No. 278891, in the Courtroom of the Honorable Benjamin H. Settle, United States
22 District Judge, in the United States District Court, 1717 Pacific Avenue, Tacoma,

1 Washington, on Tuesday, June 19, 2012, at 9:00 a.m., and shall arrange for Mr. Smith's
2 production until the trial is concluded. The Washington Department of Corrections shall
3 arrange for Mr. Smith's custody and presence at the proceedings, and shall arrange for
4 Mr. Smith's presence at the trial until its conclusion. Upon conclusion of the trial, the
5 Washington Department of Corrections shall arrange for transportation of Mr. Smith back
6 to the Washington State Penitentiary in Walla Walla, Washington. The United States
7 Marshal shall facilitate the execution of this order while Plaintiff is in the United States
8 Courthouse.

9 The Court **RESERVES RULING in part** on the issue of whether Smith will be
10 required to reimburse the State for costs associated with transportation and courtroom
11 security.

12 Dated this 13th day of June, 2012.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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